anticipated by Jursic, *et al., Tetrahedron: Asymmetry*, Vol. 5, No. 9, p. 1712 ("the Jursic reference"). The Office Action, however, fails to raise any genuine dispute regarding Applicants' prior arguments as to the absence of any anticipatory disclosure in the Jursic reference. For example, although the Office Action notes that "acids" are compounds that act as proton donors or as electron pair acceptors, there is no evidence of record indicating that any of the relevant compounds in the Jursic references would donate protons or accept electrons when employed in the claimed processes, or that such compounds would otherwise function as the claimed "acid resolving agents." Accordingly, the mere fact that there are alternative definitions for the term "acid," without more, fails to demonstrate that the Jursic reference is anticipatory.

The Office Action also fails to provide evidence that the Jursic reference discloses the formation of a salt. Although the Office Action asserts that the compounds disclosed in the Jursic reference would hydrogen bond, there is no evidence of record suggesting that those skilled in the art define the term "salt" in a way that would include complexes in which nothing more than hydrogen bonding had occurred. Thus, even if hydrogen bonding did occur among the Jursic compounds, this fact, without more, would fall far short of establishing anticipation.

Because the Jursic reference does not disclose formation of any salt, there is no basis for the Office Action's contention that the reference discloses isolation of a salt. The only evidence of salt isolation that the Office Action identifies is "the chromatogram" on page 1714 of the Jursic reference, whose peaks have been alleged to show that salt complexes have been "separated" and "recovered." The Jursic reference, however, shows nothing of the kind. Indeed,

the plot shown on page 1714 of the reference is not a "chromatogram" showing separation and recovery of the identified compounds, but an NMR spectra showing analysis of the identified compounds while in immixture with one another. (*see, e.g*, page 1714, first full paragraph; "the chloroform mixture of two enantiomers ... shows only one set of signals").

Since none of the arguments provided in the Office Action remedies the deficiencies of the Jursic reference that Applicants noted in prior correspondence, it is requested that the rejection for alleged anticipation be reconsidered and withdrawn.

Rejections Based Upon 35 U.S.C. § 103(a)

Claims 1-8, 10-13, and 15 stand rejected under 35 U.S.C. § 103 (a) as allegedly being obvious in view of the Jursic reference, in view of Berrang, *et al.,* CA 97:38738, Ohashi, *et al.*, CA 104:186157, or Vanderplas, *et al.*, CA 118:101538, and/or additional references. Applicants respectfully request reconsideration of these rejections, as the Examiner has still failed to identify any motivating force that would have impelled persons skilled in the art to modify the Jursic disclosure in a way that would have produced a claimed invention. Indeed, the Office Action provides no credible reason why a skilled artisan, without the hindsight provided by Applicants' disclosure, would have been motivated to drastically modify the teaching of the Jursic reference by employing an acid-containing resolving agent. Although the Office Action contends that those of ordinary skill would have been motivated by the knowledge that tartranilic acid and tartaric acid "function interchangeably" (Office Action at page 3), the Office Action fails to provide any evidence that these compounds had been recognized to be functionally

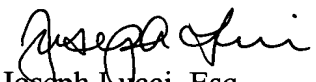
interchangeable. Absent such evidence, the rejection for alleged obviousness is unsupported and should be withdrawn.

Rejection Based on Obviousness-type Double Patenting

Claims 1-8, 10-13 and 15 are rejected under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over claims 1-9 of U.S. Patent 5,936,091. Upon indication of allowable subject matter, Applicants will consider the necessity of filing a terminal disclaimer.

Applicants believe that the foregoing constitutes a full response to the Office Action of record. Furthermore, it is respectfully submitted that this application is now in condition for allowance. Accordingly, an indication of allowability and an early Notice of Allowance are respectfully requested.

Respectfully submitted,



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